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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of CHRIST et al.

Appeal No. _____

Serial No. 10/053,713 GROUP 3736

Filed January 24, 2002 Examiner Michael C. ASTORINO

Title METHOD AND MEDICAL SYSTEM FOR POSTDISCHARGE SURVEILLANCE OF A PATIENT

APPEAL BRIEF

MAY IT PLEASE YOUR HONORS:

1. Real Party in Interest

The real party in interest in this appeal is the current assignee, Siemens Aktiengesellschaft, of Munchen, Germany.

2. Related Appeals and Interferences

None.

3. Status of Claims

Claims 13-22 remain in the application and are the subject of the present appeal. Claims 1-12 were canceled.

4. Status of Amendments

No amendments were filed following the Final rejection of September 11, 2003. Therefore, the claims on appeal are as set forth in the Appendix.

5. Summary of Invention

The invention is a method and system for monitoring a patient after the patient has been discharged from a medical facility.

At a location of the patient during the monitoring after the patient has been discharged from the medical facility, the patient is provided with a written questionnaire that gathers from the patient (Figure 1, page 6, line 36 through page 7, line 18) data suitable for detecting in the patient at least one of pneumonia, secondary bleeding, a wound healing problem, a pulmonary complication, a urinary tract infection, and a thrombosis (page 5, lines 32-36). The patient data are conveyed in the written questionnaire to a data bank over a telephone connection using one of a voice transmission and a facsimile transmission (page 7, lines 36-37; and page 4, line 11). The conveyed data are automatically evaluated with an evaluating device that is associated with the data bank (page 8, lines 10-17).

The written questionnaire may be replaced by a questionnaire at a world wide web site that is accessible with a computer at a location of the patient during the monitoring after the patient has been discharged from the medical facility and that is connected to a communication network. The patient data may be entered in the questionnaire using the computer and conveyed to the data bank over the communication network (page 9, lines 24-36).

Further, receipt of the patient data may be monitored at the data bank and a signal sent to at least one of the patient and a caregiver when the patient data are not received (page 9, lines 18-22). An alarm signal may be sent to at least one of the patient and a caregiver when the evaluating device indicates that the patient data are critical, such as when the data indicate excessive painkiller consumption following an operation (page 5, lines 18-30; page 8, lines 18-35).

By way of further explanation, the invention presents a convenient and cost-effective way to monitor a patient after discharge from a hospital by providing a questionnaire that is filled out by the patient or a caregiver on behalf of the patient. The questionnaire is designed to obtain information

suitable for determining if the patient has developed one or more of the aforementioned post-surgical conditions. For ease of evaluation, the questionnaire is transmitted to a central data bank and an evaluating device coupled to the data bank evaluates the responses to the questionnaire to determine if the patient has developed the post-surgical conditions. If the data are critical, that is if the data indicate that the patient may have developed a post-surgical condition, then the patient or caregiver is notified with an alarm (page 2, line 6 through page 4, line 7).

6. Issues

Whether the subject matter of claims 13-15 and 19-20 are anticipated under §102(e) by LLOYD et al. 6,409,662.

Whether the subject matter of claim 16 is anticipated under §102(e) by ILIFF 6,206,829.

Whether the subject matter of claims 16-18 and 21-22 would have been obvious under 35 U.S.C. §103 to one of skill in the art at the time of the present invention over LLOYD et al. in view of ILIFF.

7. Grouping of Claims

The claims do not stand or fall together. There are four groups of claims and each of these four groups of claims stands or falls separately from the other groups. Claims 13-14 stand or fall together. Claims 15 and 19-20 stand or fall together. Claims 16-17 stand or fall together. Claims 18 and 21-22 stand or fall together.

8. Argument

Claims 13-14. These claims were rejected as anticipated by LLOYD et al. However, LLOYD et al. do not disclose that the system described therein monitors a patient after the patient has been discharged from a medical facility. LLOYD et al. describe a remote monitoring system for a patient in

need of care for edema (abnormal accumulation of fluid that causes swelling) and cardiac associated disease (column 4, lines 36-50). There is no evidence of record to indicate that the system is suitable for care following discharge from a medical facility.

These claims also provide that the patient data in the written questionnaire are conveyed to a data bank over a telephone connection using one of a voice transmission and a facsimile transmission. LLOYD et al. describe transmission of data using suitable communication means such as modems, cable modems, local area or wide area networks, wireless transmission and the like (column 7, lines 51-67), but do not disclose the use of voice or facsimile transmission.

Accordingly, LLOYD et al. do not disclose all the limitations of claims 13-14 and these claims avoid the rejection under §102.

Claims 15 and 19-20. These claims were rejected as anticipated by LLOYD et al. and are allowable for the reasons given above for claims 13-14.

In addition, these claims provide that the method and system generate an alarm signal in response to an indication from the evaluation device that the patient data are critical. LLOYD et al. do not disclose that an evaluation of criticality is made in their system and do not indicate that an alarm is generated when the patient data are critical. LLOYD et al. provide an alarm when a patient is to take readings (column 7, lines 8-10) and compare data to maximum and minimum values (column 7, lines 35-41), but do not associate an alarm with critical data.

Accordingly, LLOYD et al. do not disclose all the limitations of claims 15 and 19-20 and these claims avoid this rejection under §102.

Claims 16-17. Claim 16 was rejected as anticipated by ILIFF and claims 16-17 were rejected as unpatentable over LLOYD et al. in view of ILIFF. However, ILIFF does not disclose that the system described therein monitors a patient after the patient has been discharged from a medical facility. ILIFF describes a computerized medical diagnostic and treatment advice system that dispenses computer-

generated medical advice in response to user inputs (column 3, line 3 through column 4, line 45). There is no evidence of record to indicate that the ILIFF system is suitable for monitoring a patient following discharge from a medical facility. As noted above, LLOYD et al. also do not disclose that the system described therein monitors a patient after the patient has been discharged from a medical facility. LLOYD et al. describe a remote monitoring system for a patient in need of care for edema (abnormal accumulation of fluid that causes swelling) and cardiac associated disease. There is no evidence of record to indicate that the system in LLOYD et al. is suitable for care following discharge from a medical facility. Since neither reference indicates that its respective system is suitable for care following discharge from a medical facility, there is no basis for asserting that one of skill in the art would find it obvious to do so.

Accordingly, ILIFF does not disclose all the limitations of claim 16 and the combination of LLOYD et al. and ILIFF does not reveal all of the limitations of claims 16-17 and these claims avoid these rejections under §102 and §103.

Claims 18 and 21-22. These claims were rejected as unpatentable over LLOYD et al. in view of ILIFF and are allowable for the reasons given above for claims 16-17.

In addition, these claims provide that the method and system generate an alarm signal in response to an indication from the evaluation device that the patient data are critical. Neither ILIFF nor LLOYD et al. disclose that an evaluation of criticality is made in their system or that an alarm is generated when the patient data are critical. LLOYD et al. provide an alarm when a patient is to take readings (column 7, lines 8-10) and compare data to maximum and minimum values (column 7, lines 35-41), but do not associate an alarm with critical data. ILIFF dispenses medical advice and does not generate an alarm. The system in ILIFF may receive responses that indicate that the caller is experiencing a medical emergency, but in this event instructs the caller to take appropriate action such as dialing 911 (column 25, line 56 through column 26, line 34). There is no indication that an alarm is generated.

Accordingly, the combination of LLOYD et al. and ILIFF does not disclose all the limitations of claims 18 and 21-22 and these claims avoid this rejection under §103.

In view of this, it is believed that the rejections of record cannot be sustained and that the same must be reversed and such is respectfully requested.

Respectfully submitted,

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9. Appendix

The claims on appeal:

13. A method for monitoring a patient after the patient has been discharged from a medical facility, the method comprising the steps of:

at a location of the patient during the monitoring after the patient has been discharged from the medical facility, providing the patient with a written questionnaire that gathers from the patient data suitable for detecting in the patient at least one of pneumonia, secondary bleeding, a wound healing problem, a pulmonary complication, a urinary tract infection, and a thrombosis;

conveying the patient data in the written questionnaire to a data bank over a telephone connection using one of a voice transmission and a facsimile transmission; and

automatically evaluating the conveyed data with an evaluating device that is associated with the data bank.

14. The method of claim 13, further comprising the step of monitoring receipt of the patient data at the data bank and sending a signal to at least one of the patient and a caregiver when the patient data are not received.

15. The method of claim 13, further comprising the step of sending an alarm signal to at least one of the patient and a caregiver when the evaluating device indicates that the patient data are critical.

16. A method for monitoring a patient after the patient has been discharged from a medical facility, the method comprising the steps of:

providing on a world wide web site a questionnaire that is accessible with a computer at a location of the patient during the monitoring after the patient has been discharged from the medical facility and that is connected to a communication network;

entering patient data in the questionnaire with the computer; the patient data being suitable for detecting in the patient at least one of pneumonia, secondary bleeding, a wound healing problem, a

pulmonary complication, a urinary tract infection, and a thrombosis;

conveying the patient data in the questionnaire to a data bank over the communication network; and

automatically evaluating the patient data with an evaluating device that is associated with the data bank.

17. The method of claim 16, further comprising the step of monitoring receipt of the patient data at the data bank and sending a signal to at least one of the patient and a caregiver when the patient data are not received.

18. The method of claim 16, further comprising the step of sending an alarm signal to at least one of the patient and a caregiver when the evaluating device indicates that the patient data are critical.

19. A system for monitoring a patient after the patient has been discharged from a medical facility, the system comprising:

a data bank at a location different from a location of the patient during the monitoring after the patient has been discharged from the medical facility, said data bank being arranged and adapted to store patient data suitable for detecting in the patient at least one of pneumonia, secondary bleeding, a wound healing problem, a pulmonary complication, a urinary tract infection, and a thrombosis, the patient data being in a written questionnaire at the location of the patient during the monitoring;

a telephone connection that connects said data bank to the location of the patient during the monitoring and that is arranged and adapted to convey the patient data in the written questionnaire to said data bank with one of a voice transmission and a facsimile transmission;

an evaluation device that is operatively connected to said data bank and that is arranged and adapted to evaluate the patient data in said data bank; and

an alarm for generating an alarm signal in response to an indication from said evaluation device that the patient data are critical.

20. The system of claim 19, wherein said data bank is further arranged and adapted to monitor receipt of the patient data at said data bank and to send a signal to at least one of the patient and a caregiver when the patient data are not received.

21. A system for monitoring a patient after the patient has been discharged from a medical facility, the system comprising:

a world wide web site with a questionnaire that is accessible with a computer at a location of the patient during the monitoring after the patient has been discharged from the medical facility and that is connected to a communication network, the questionnaire gathering patient data suitable for detecting in the patient at least one of pneumonia, secondary bleeding, a wound healing problem, a pulmonary complication, a urinary tract infection, and a thrombosis;

a data bank at a location different from the location of the patient during the monitoring, said data bank being connected to the communication network and arranged and adapted to receive and store the patient data in the questionnaire;

an evaluation device that is operatively connected to said data bank and that is arranged and adapted to evaluate the patient data in said data bank; and

an alarm for generating an alarm signal in response to an indication from said evaluation device that the patient data are critical.

22. The system of claim 21, wherein said data bank is further arranged and adapted to monitor receipt of the patient data at said data bank and to send a signal to at least one of the patient and a caregiver when the patient data are not received.